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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,186	07/09/2003	Thomas B. Johnston	20060-1-0010	9679
26135	7590	10/12/2004	EXAMINER	
LOTT & FRIEDLAND, P.A. P.O. BOX 141098 CORAL GABLES, FL 33114-1098			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/616,186	JOHNSTON, THOMAS B. <i>ST</i>
	Examiner Gregory J. Strimbu	Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-45 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 09 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: ____ .   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/9/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: ____ .                                   |

***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bar extending vertically across the louvers, winding crank mechanism, a Z bar, and predrilled holes must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because figure 3 fails to include cross sectional shading in accordance with MPEP 608.02. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "[t]he present invention provides" on line 1 can be easily implied and therefore should be deleted. Additionally, "all tropical weather" on line 2 is confusing since it is unclear how the invention is capable of withstanding all conceivable tropical weather. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to refer to the storm resistant nature of the shutter.

***Claim Rejections - 35 USC § 112***

Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “a hurricane resistant material” on lines 6-7 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. What characteristic of a hurricane is the applicant referring to? Is the applicant referring to a water resistant material? Additionally, what comprises “resistance”? Recitations such as “L-angle” on line 1 of claim 3 render the claims indefinite because it is unclear what the applicant is attempting to set forth. Is the applicant referring to a bar being L-shaped in cross section? Recitations such as “said vertical member” on line 2 of claim 8 render the claims indefinite because it is unclear which one of the plurality of vertical members set forth above the applicant is referring to. Recitations such as “said structure” on line 5 of claim 21 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a shutter or the combination of a shutter and a structure. The preamble of claim 21 implies the subcombination while the positive recitation of the structure implies the combination.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Zveibil. Zveibil discloses a shutter providing storm protection comprising an outer frame 10 formed by a pair of vertical

members and a pair of horizontal members connected to each other and defining an interior area, a plurality of functional horizontal louvers 18 movably connected to said outer frame and substantially filling said interior area of said frame; and wherein said outer frame and said louvers are made out of a hurricane resistant material, i.e., metal, an operating mechanism 32.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 15, 23, 29, 38, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above and further in view of Lane. Lane discloses a L shaped operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Claims 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36

above, and further in view of Vaida. Vaida discloses a winding crank operating mechanism 46.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a winding crank operating mechanism, as taught by Vaida, to increase the ease with which the louvers can be moved.

Claims 10, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Yadidya. Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with louvers, as taught by Yadidya, to prevent air from passing through the shutter.

Claims 11 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Arehart et al. Arehart et al. discloses an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an aluminum construction, as taught by Arehart et al., to improve the corrosion resistance of the shutter.

Claims 12 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Astrisky. Astrisky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a polycarbonate construction, as taught by Astrisky, to increase the durability of the shutter.

Claims 13 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claims 16 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Lane. Lane discloses a Z shaped operating mechanism 20.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with an operating mechanism, as taught by Lane, to increase the strength of the operating mechanism.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Arehart et al. Arehart et al. discloses a means for holding a frame against a structure comprising holes and bolts 42.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a holding means, as taught by Arehart et al., to enable a user to fix the shutter to the structure for security purposes.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil as applied to claims 1, 2, 4, 5, 7, 8, 14, 18, 19, 21, 22, 24, 25, 27, 28, 35 and 36 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

It would have been obvious to one of ordinary skill in the art to provide Zveibil with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in

view of Yadidya. Yadidya discloses louvers 1 which interlock with each other in a closed position.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with louvers, as taught by Yadidya, to prevent air from passing through the shutter.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Arehart et al. Arehart et al. discloses an aluminum construction.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with an aluminum construction, as taught by Arehart et al., to improve the corrosion resistance of the shutter.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Astrisky. Astrisky discloses the use of polycarbonate 87 for storm protection.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a polycarbonate construction, as taught by Astrisky, to increase the durability of the shutter

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Patberg et al. Patberg et al. discloses the use of high density foam plastic.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a high density foam plastic construction, as taught by Patberg et al., to increase the impact resistance of the shutter.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zveibil in view of Lane as applied to claims 3, 9, 15, 23, 29, 38, 43 and 44 above, and further in view of Kramer. Kramer discloses a telescoping means for holding a lower horizontal member comprising a telescoping arm 15.

It would have been obvious to one of ordinary skill in the art to provide Zveibil, as modified above, with a telescoping arm, as taught by Kramer, to enable a user to position the shutter in a plurality of positions pivoted away from the structure.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pettigrew et al., Sipos et al., Santos, Welch, Griffith, Lee, Swapp, Taegar, Probert and Valls et al. are cited for disclosing a shutter system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-

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305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
September 24, 2004